IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.3159 OF 2005

IN

SUIT NO.2842 OF 2005

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Smt.Beena Manak Mehta ...Plaintiff

v/s.

Binoy Janak Maniar ...Defendant

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Mr.V.R.Dhond with Mr.Sandip Parikh i/b India Law Alliance for the Plaintiff.

Mr.M.S.Bhandari i/b Ms.Khushbu Prabhu for the Defendant.

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CORAM: D.K.DESHMUKH, J.

DATED: 21ST JUNE, 2007

P.C.:

1. This Notice of Motion is taken out by the Plaintiff. The Plaintiff has filed this suit for a decree of declaration that the Defendant has no right to occupy the suit flat and the Plaintiff is seeking a decree of possession. The Plaintiff is also claiming a decree of mesne profit. There is no dispute between the parties that the Plaintiff is owner of the flat. The share certificate of the flat stands in the name of the Plaintiff. According to the Plaintiff, the Defendant was an employee in the firm of which the husband of the Plaintiff is a partner. As the Defendant was also the distant relative of the Plaintiff, the Plaintiff allowed the Defendant to occupy the flat from the year 1991 as the gratuitous licencee. According to the Plaintiff, an agreement of leave and licence was also signed by the Defendant. It was a gratuitous licence that was granted.

. Though the period of licence expired, the Defendant did not vacate, therefore, proceedings were

taken up under the Maharashtra Rent Control Act. In those proceedings, ultimately an order was made that the Defendant is a gratuitous licencee and therefore, in terms of the judgment of the Division Bench of this Court, the authorities under the Maharashtra Rent Control Act have no jurisdiction to make an order for eviction of the Defendant. Hence, this suit is filed on title for decree of possession.

2. In the affidavit in reply filed by the Defendant, it is the case of the Defendant, as is found in paragraph 14 of his reply, that the flat came to be purchased in the year 1990 by one M.Sushil & Co. and its partners for the ultimate benefits of the Defendant. Pursuant to oral agreement the Defendant would have to pay the purchase price of Rs.6,75,000/- of the suit flat to the Plaintiff in installments from the salary that was being paid to the Defendant till the entire purchase price was repaid and till the repayment of the purchase price, the flat was to stand in the name of the Plaintiff. It is further claimed that in the year 2002 differences arose between the parties and the Plaintiff denied existence of the oral agreement and instead signature of the Defendant was obtained by force on leave &

licence agreement.

3. The learned Counsel appearing for the Plaintiff submits that the Defendant is not entitled to continue to occupy the flat. He was permitted to occupy the flat as he was an employee of the firm of which the Plaintiff's husband is a partner. The version put up by the Defendant of the oral agreement in the affidavit filed in support of the motion is different from the version put up in the suit that has been filed by the Defendant in this court seeking a decree of specific performance of the alleged oral agreement. It is submitted that the case to be found in the notice that was issued by the Defendant to the Plaintiff dated 9th October, 2000, and the case put up in the complaint that was made by the Defendant to the police in October, 2000 is different. At each place different version of alleged oral agreement is given. It is further submitted that even there is variance in the price of the flat which was to be paid by the Defendant. It is submitted that not a single document is produced to show what was the salary to which the Defendant was entitled from the partnership firm and how much amount was deducted from his salary. According to the Plaintiff it is a

fit case where the Receiver should be appointed.

4. The learned Counsel appearing for the Defendant submits that the flat was purchased for the benefits of the Defendant. Deduction of the purchase price was made from his salary and after having recovered the price the Plaintiff is now raising a dispute. The learned Counsel submits that the leave and licence agreement was never signed by the Defendant. The learned Counsel submits that in any case for protection of interest of the Plaintiff grant of temporary injunction restraining the Defendant from transferring the property would be adequate. The learned Counsel submits that even if the Receiver is appointed, the Defendant is ready to be the agent of the Receiver, but he should not be made to pay royalty.

5. From the rival submissions and the record it is clear that there is no dispute that so far as the ownership of the flat is concerned, it is the Plaintiff who is the owner of the flat. The Defendant is claiming some rights in relation to that flat. But the version of those rights that is given by the Defendant on each occasion is different and

distinct. The first version in point of time given by the Defendant was in his letter written to the Sr.Inspector of Police, Dadar Police Station dated 6th October, 2000. A copy of that letter has been annexed by the Defendant to his own plaint in Civil Suit No.3332 of 2001. There he states " The flat is in joint name of Mrs.Bina Manak Mehta. I was given the flat in view of the remuneration as service which I am rendering to her husband Mr.Manak Mehta. As I left the service of Mr.Sushil for personal reason in June, 2000, since July 2000 we have being facing harassment and torture at the hands of our employer Mr.Sushil and Mr.Manak." Thus according to this letter, the flat was given to the Defendant by the Plaintiff as the remuneration of the service. At this stage the Defendant does not claim that there was any oral agreement, at the time of purchase of the flat, entered into between the Plaintiff and the Defendant. Then the Defendant issued notice to the Plaintiff. That notice is dated 9th October, 2000. There he states that "the said flat was purchased for exclusive benefits of my client; That during the relevant time my client had no sufficient funds to pay the price of the said flat, therefore, it was agreed that said flat would be acquired in your name

and the possession of the flat was handed over to my client. However, as repayment towards consideration price of the said flat it was agreed that Mr.Sushil & Co. the firm in which my client and his brother was working shall deduct necessary salary from my client and his brother's salary and the said amounts would be paid to you and accordingly from time to time the amount was deducted from their salaries and in all my client has paid a sum of Rs.7.50 lakh approximately towards repayment of the price of the said flat."

. In the above said notice dated 9th October, 2000, the case of the Defendant is that there was an oral agreement reached at the time of purchase of the flat in the year 1990 that the flat is purchased by the Plaintiff for the benefits of the Defendant and that the purchase price of the flat will be deducted from the salary of the Plaintiff and his brother who were working for the partnership firm of which the Plaintiff's husband was a partner and that pursuant to that oral agreement an amount of Rs.7.50 lakh was paid by the Defendant towards purchase price of the flat. Then the Defendant filed Civil Suit No.3332 of 2001 seeking a decree of specific performance of the alleged oral agreement. In paragraph 1 of the

plaint, the Defendant No.1 states thus, "Suit premises were purchased by Defendants Nos.2 to 4 for the ultimate benefits of the Plaintiff. However, for the sake of security for repayment of the purchase price the suit premises was purchased in the name of Defendant No.1 on the express understanding and agreement that the said would be ultimately transferred and conveyed to the Plaintiff upon payment of the entire purchase price thereof in installment, which would be deducted by Defendants Nos. 2 to 4 from the salary paid by them to the Plaintiff." In paragraph 3 the Defendant states that in the year 1990 his annual salary was Rs.1,40,000/-. In paragraph 4 of the plaint the Plaintiff states thus "purchase price of the suit premises was Rs.6,75,000/-. The purchase was paid by the Defendant. It was expressly understood that repayment would be made from the monthly salary of the Plaintiff that was paid in cash till the entire purchase price of Rs.6,75,000/- of the suit premises was repaid to the Defendant and till then the suit premises would stand in the name of the Defendant No.1." In paragraph 12, the Defendant states that on account of deduction made from the salary paid to him the entire purchase price of Rs.6.75 lakh stood

deducted by April, 1999. Thus, according to version that is to be found in civil suit filed by the Defendant, now the purchase price was Rs.6.75 lakh. That purchase price was to be deducted from the salary of the Defendant only and actually it was deducted only from the salary of the Defendant. Admitted position is that the brother of the Defendant, even according to the Defendant, was not in the service of the partnership firm in 1990 and he joined the service in the year 1995. Therefore, if one goes by the version that is to be found in the notice dated 9th October, 2000, in the year 1990 there could not have been an agreement for deduction of the price from the salary payable to the Defendant, as at that time even according to the Defendant, he was not in the service of the firm. According to the version in the notice, price was Rs.7.50 lakh which was actually paid by way of deduction in salaries by the Defendant and his brother. According to version in the plaint, price is different. The mode of recovery of that price is different. In the notice dated 9th October, 2000 it is not made clear as to by what month the entire purchase price was paid. However, in the plaint, it is said that deduction of entire purchase price was

completed by April, 1999. But according to the version in the plaint, deduction was only from the salary of the Defendant. There is no reference to the deduction of the salary from the salary of the brother of the Defendant. What is most interesting is that not a single document has been produced on record to show as to what was the salary payable to the Defendant , what was the salary payable to his brother, how much money was deducted from the salary of the Defendant or his brother. In other words, there is not a single document produced to support the case of the Defendant that anything from his salary was deducted towards the price of the flat. Though the Defendant relies on alleged oral agreement of the year 1990, neither the date nor the month of that agreement is disclosed, nor the place of that agreement is disclosed. Perusal of the letter written to the Police in the month of October, 2000 shows that in that letter totally different version is given. There he claims that the flat was given to the Defendant as remuneration. Perusal of these different versions given by the Defendant shows that the Defendant at each occasion is giving different version which clearly indicates that the Defendant is an dishonest person. It is an admitted position that

the Defendant is occupying the flat. He has not been able to establish as observed above that he has paid a single pie either to the Plaintiff or her husband either towards occupation of the flat or towards price of the flat as alleged by him.

6. As the Defendant, prima facie, appears to lack any entitlement to continue to occupy the flat, in my opinion, this is a fit case where the Receiver has to be appointed to safeguard the interest of the Plaintiff. As observed above, even according to the Defendant he is occupying the flat from 1990 and he has not paid anything to the Plaintiff who admittedly is the owner of the flat, towards occupation charges of the flat. He claims to have paid at one place Rs.6.75 lakh and at other place Rs.7.50 lakh to the partnership firm, but not a single document as observed above has been produced. In my opinion, therefore, permitting the Defendant to occupy the flat without paying royalty at the market rate will defeat the ends of justice. In my opinion, it will be in the fitness of things to direct the Receiver to recover royalty at the market rate from the Defendant, in case the Defendant is to be appointed as agent of the Receiver.

7. Taking overall view of the matter, therefore, following order would meet the ends of justice.

. Notice of motion is granted in terms of prayer clause (a), excluding bracketed portion.

. It is directed that the Receiver shall take initially only symbolic possession. After the Defendant files an undertaking before the Receiver agreeing to be the agent of the Receiver in possession of the flat on usual terms and conditions including royalty and security, the Receiver may appoint the Defendant as his agent to be in possession of the flat on usual terms and conditions including security and royalty.

. In case the Defendant does not files such an undertaking and enter into agency agreement within the period of six weeks from the date on which the Receiver calls upon him to enter into such an agreement, the Receiver shall take physical possession of the flat, if necessary by taking police help and take steps to appoint an agent to be in possession of the flat by following usual procedure

and appoint a person who is willing to offer highest bid for royalty.

. Till the Receiver takes possession, ad-interim order in terms of prayer clause (b) shall operate.

. In view of the conduct of the Defendant, in my opinion, it will be appropriate to impose exemplary costs on the Defendant. The Defendant is, therefore, directed to pay as and by way of costs of Rs.20,000/- to the Plaintiff.

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